

§ 1703.17 Time limits.

(a) *Initial request.* Following receipt of a request for records, the FOIA Officer will determine whether to comply with the request and will notify the requester in writing of his or her determination within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the request.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 1703.16 of this subpart will be issued within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the appeal. However, determination of an appeal of a denial of expedited processing will be issued as expeditiously as practicable. When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If the date specified for the extension is more than 10 days after the initial time allowed for response, OFHEO will provide the requester an opportunity to limit the scope of the request or arrange for an alternate time frame for processing the request. As used in this paragraph, *unusual circumstances* means that there is a need to—

(1) Search for and collect the requested records from facilities that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various offices within OFHEO

that have a substantial interest in the records requested.

(d) *Related requests.* OFHEO may aggregate multiple requests involving clearly related matters made by a single requester, or a group of requesters acting in concert, if OFHEO reasonably believes that such requests actually constitute a single request that would qualify as an “unusual circumstance.”

(e) *Expedited processing.* (1) Upon a demonstration of compelling need by the requester, OFHEO will grant a request for expedited processing of a FOIA request. If a request for expedited processing is granted, OFHEO will give the request priority and process it as soon as practicable.

(2) To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(i) The failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester's main professional occupation or activity is information dissemination and there is a particular urgency to inform the public of government activity involved in the request beyond the public's right to know about government activity generally.

(3) The requester's statement of compelling need must be certified to be true and correct to the best of his or her knowledge and belief and must explain in detail the basis for requesting expedited processing. The formality of the certification required to obtain expedited treatment may be waived by OFHEO in its discretion.

(4) A requester seeking expedited processing will be notified within ten (10) working days of the receipt of the request whether expedited processing has been granted. If the request for expedited processing is denied, OFHEO will act on any appeal expeditiously.

[65 FR 55173, Sept. 13, 2000. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

§ 1703.18 Special procedures for business information.

(a) *In general.* Business information provided to OFHEO by a business submitter shall not be disclosed pursuant

to an FOIA request except in accordance with this section.

(b) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Business information* means trade secrets or other commercial or financial information, provided to OFHEO by a submitter, which arguably is protected from disclosure under § 1703.11(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Business submitter* means any person or entity which provides business information, directly or indirectly, to OFHEO and who has a proprietary interest in the information.

(c) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under § 1703.11(b)(4). Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(d) *Predisclosure notification.* (1) Except as is provided for in paragraph (i) of this section, the FOIA Officer shall, to the extent permitted by law, provide a submitter with prompt written notice of an FOIA request or administrative appeal encompassing its business information whenever required under paragraph (e) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the FOIA Officer provides a business submitter with the notice set forth in paragraph (e)(1) of this section, the FOIA Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under § 1703.11(b)(4) and that the person or entity who submitted the information to OFHEO has been given the opportunity to comment on the proposed disclosure of information.

(e) *When notice is required.* OFHEO shall provide a business submitter with notice of a request whenever—

(1) The business submitter has in good faith designated the information as business information deemed protected from disclosure under § 1703.11(b)(4); or

(2) OFHEO has reason to believe that the request seeks business information the disclosure of which may result in substantial commercial or financial injury to the business submitter.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (d) of this section, OFHEO shall, to the extent permitted by law, afford a business submitter at least 10 days (excluding Saturdays, Sundays, and legal holidays) within which it can provide OFHEO with a detailed written statement of any objection to disclosure. Such statement shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential and why disclosure would cause competitive harm. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* (1) The FOIA Officer shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the FOIA Officer decides to disclose business information over the objection of a business submitter, the FOIA Officer shall forward to the business submitter a written notice at least 10 days (excluding Saturdays, Sundays, and legal holidays) before the date of disclosure containing—

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained,

(ii) A description of the business information to be disclosed, and

(iii) A specified disclosure date.

Federal Housing Enterprise Oversight

§ 1703.21

(2) Such notice of intent to disclose likewise shall be forwarded to the requester at least 10 days (excluding Saturdays, Sundays, and legal holidays) prior to the specified disclosure date.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the FOIA Officer shall promptly notify the business submitter of such action.

(i) *Exceptions to predisclosure notification.* The requirements of this section shall not apply if—

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than the Freedom of Information Act); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, the FOIA Officer will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

[63 FR 71005, Dec. 23, 1998, as amended at 65 FR 55173, Sept. 13, 2000. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

Subpart D—Fees for Provision of Information

§ 1703.21 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Commercial use request* means a request for information that is from, or on behalf of, a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, OFHEO shall determine the purpose for which the requested records shall be used. If OFHEO has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, OFHEO shall seek addi-

tional clarification before assigning the request to a specified category.

(b) *Direct costs* means the expenditures actually incurred by OFHEO in searching for and reproducing records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures OFHEO actually incurs in reviewing records to respond to the request. The direct costs shall include the cost of the time of the employee performing the work, determined in accordance with § 1703.22(b)(1)(i), the cost of any computer searches, determined in accordance with § 1703.22(b)(1)(ii), and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored. Direct costs also include the costs incurred by OFHEO for any contract services that may be needed to respond to a request.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(d) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial, trade, or profit basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances in which the periodicals can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public.